



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 5154-99

1 June 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 31 May 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 18 April 1972 at age 20. The record shows that during 1973 you received nonjudicial punishment on four occasions and were convicted by a summary court-martial. Your offenses were four periods of unauthorized absence totaling about five days, absence from your appointed place of duty and dereliction of duty.

During 1974, you were an unauthorized absentee on several occasions. Some entries in the record show that you were an unauthorized absentee on three occasions totaling about 172 days, but other entries show that you were an unauthorized absentee on four occasions totaling about 90 days. Your military record shows that you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for three periods of unauthorized absence totaling about 172 days. Your record also shows that prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. The Board found that your request was granted on 19 August 1974 and, as a result of this action, you were spared the stigma of a court-martial

conviction and the potential penalties of a punitive discharge and confinement at hard labor. You were discharged on 21 August 1974.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as the conflicting information concerning the length of your periods of unauthorized absences and your contention that you were told that the discharge would be recharacterized after a period of six months. The Board found that these factors and contentions were not sufficient to warrant recharacterization of your discharge given your record of misconduct and especially your request for discharge to avoid trial for lengthy periods of unauthorized absence. The Board further found that whatever the length of the periods of unauthorized absence, it would make no difference in your case. The Board was aware that there is no provision in the law or regulations which would require the recharacterization of a discharge based solely on the passage of a period of time.

The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain when your request for discharge was granted and you should not be permitted to change it now. The Board concluded that your discharge was proper as issued and no change is warranted.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director